

AMENDED IN SENATE APRIL 26, 2016

**SENATE BILL**

**No. 1034**

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**Introduced by Senator Mitchell**

February 12, 2016

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An act to amend Section 1374.73 of the Health and Safety Code, and to amend Sections 10144.51 and 10144.52 of the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

SB 1034, as amended, Mitchell. Health care coverage: autism.

Existing law provides for the licensure and regulation of health care service plans by the Department of Managed Health Care. A violation of those provisions is a crime. Existing law provides for the licensure and regulation of health insurers by the Department of Insurance.

Existing law requires every health care service plan contract and health insurance policy to provide coverage for behavioral health treatment for pervasive developmental disorder or autism until January 1, 2017, and defines "behavioral health treatment" to mean specified services provided by, among others, a qualified autism service professional supervised and employed by a qualified autism service provider. Existing law defines a "qualified autism service professional" to mean a person who, among other requirements, is a behavior service provider approved as a vendor by a California regional center to provide services as an associate behavior analyst, behavior analyst, behavior management assistant, behavior management consultant, or behavior management program pursuant to specified regulations adopted under the Lanterman Developmental Disabilities Services Act. Existing law requires a treatment plan to be reviewed no less than once every 6 months.

This bill would, among other things, modify requirements to be a qualified autism service professional to include providing behavioral health treatment, such as clinical management and case supervision. The bill would require that a treatment plan be reviewed no more than once every 6 months, unless a shorter period is recommended by the qualified autism service provider. The bill would extend the operation of these provisions indefinitely. The bill would make conforming changes.

By extending the operation of these provisions, the violation of which by a health care service plan would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1374.73 of the Health and Safety Code  
2     is amended to read:  
3     1374.73. (a) (1) Every health care service plan contract that  
4     provides hospital, medical, or surgical coverage shall also provide  
5     coverage for behavioral health treatment for pervasive  
6     developmental disorder or autism no later than July 1, 2012. The  
7     coverage shall be provided in the same manner and shall be subject  
8     to the same requirements as provided in Section 1374.72.  
9     (2) Notwithstanding paragraph (1), as of the date that proposed  
10    final rulemaking for essential health benefits is issued, this section  
11    does not require any benefits to be provided that exceed the  
12    essential health benefits that all health plans will be required by  
13    federal regulations to provide under Section 1302(b) of the federal  
14    Patient Protection and Affordable Care Act (Public Law 111-148),  
15    as amended by the federal Health Care and Education  
16    Reconciliation Act of 2010 (Public Law 111-152).  
17    (3) This section shall not affect services for which an individual  
18    is eligible pursuant to Division 4.5 (commencing with Section

1 4500) of the Welfare and Institutions Code or Title 14  
2 (commencing with Section 95000) of the Government Code.

3 (4) This section shall not affect or reduce any obligation to  
4 provide services under an individualized education program, as  
5 defined in Section 56032 of the Education Code, or an individual  
6 service plan, as described in Section 5600.4 of the Welfare and  
7 Institutions Code, or under the federal Individuals with Disabilities  
8 Education Act (20 U.S.C. Sec. 1400 et seq.) and its implementing  
9 regulations.

10 (b) Every health care service plan subject to this section shall  
11 maintain an adequate network that includes qualified autism service  
12 providers who supervise qualified autism service professionals or  
13 paraprofessionals who provide and administer behavioral health  
14 treatment. Nothing shall prevent a health care service plan from  
15 selectively contracting with providers within these requirements.

16 (c) For the purposes of this section, the following definitions  
17 shall apply:

18 (1) “Behavioral health treatment” means professional services  
19 and treatment programs, including applied behavior analysis and  
20 other evidence-based behavior intervention programs, that develop,  
21 ~~maintain~~, *keep*, or restore, to the maximum extent practicable, the  
22 functioning of an individual with pervasive developmental disorder  
23 or autism and that meet all of the following criteria:

24 (A) The treatment is prescribed by a physician and surgeon  
25 licensed pursuant to Chapter 5 (commencing with Section 2000)  
26 of, or is developed by a psychologist licensed pursuant to Chapter  
27 6.6 (commencing with Section 2900) of, Division 2 of the Business  
28 and Professions Code.

29 (B) The treatment is provided under a treatment plan prescribed  
30 by a qualified autism service provider and is administered by one  
31 of the following:

32 (i) A qualified autism service provider.

33 (ii) A qualified autism service professional supervised by the  
34 qualified autism service provider.

35 (iii) A qualified autism service paraprofessional supervised by  
36 a qualified autism service provider.

37 (C) The treatment plan has measurable goals over a specific  
38 timeline that is developed and approved by the qualified autism  
39 service provider for the specific patient being treated. The treatment  
40 plan shall be reviewed no more than once every six months by the

1 qualified autism service provider, unless a shorter period is  
2 recommended by the qualified autism service provider, and  
3 modified whenever appropriate, and shall be consistent with  
4 Section 4686.2 of the Welfare and Institutions Code pursuant to  
5 which the qualified autism service provider does all of the  
6 following:

7 (i) Describes the patient's behavioral health impairments or  
8 developmental challenges that are to be treated.

9 (ii) Designs an intervention plan that includes the service type,  
10 number of hours, and parent or caregiver participation  
11 recommended by the qualified autism service provider, needed  
12 provider to achieve the plan's goal and objectives, and the  
13 frequency at which the patient's progress is evaluated and reported.  
14 Lack of parent or caregiver participation shall not be used to deny  
15 or reduce medically necessary behavioral health treatment.

16 (iii) Provides intervention plans that utilize evidence-based  
17 practices, with demonstrated clinical efficacy in treating pervasive  
18 developmental disorder or autism.

19 (iv) Discontinues intensive behavioral intervention services  
20 when the treatment goals and objectives are achieved or no longer  
21 appropriate, and continued therapy is not necessary to maintain  
22 function or prevent deterioration.

23 (D) (i) The treatment plan is not used for purposes of providing  
24 or for the reimbursement of respite, day care, or educational  
25 academic services and is not used to reimburse a parent for  
26 participating in the treatment program.

27 ~~(ii) Notwithstanding the clause (i), all medically necessary~~  
28 ~~behavioral health treatment shall be covered in all settings~~  
29 ~~regardless of time or location of delivery.~~

30 *(ii) The setting, location, or time of treatment shall not be used*  
31 *as a reason to deny medically necessary behavioral health*  
32 *treatment.*

33 (iii) The treatment plan shall be made available to the health  
34 care service plan upon request.

35 (2) "Pervasive developmental disorder or autism" shall have  
36 the same meaning and interpretation as used in Section 1374.72.

37 (3) "Qualified autism service provider" means either of the  
38 following:

39 (A) A person, entity, or group that is certified by a national  
40 entity, such as the Behavior Analyst Certification Board, that is

1 accredited by the National Commission for Certifying Agencies,  
2 and who designs, supervises, or provides treatment for pervasive  
3 developmental disorder or autism, provided the services are within  
4 the experience and competence of the person, entity, or group that  
5 is nationally certified.

6 (B) A person licensed as a physician and surgeon, physical  
7 therapist, occupational therapist, psychologist, marriage and family  
8 therapist, educational psychologist, clinical social worker,  
9 professional clinical counselor, speech-language pathologist, or  
10 audiologist pursuant to Division 2 (commencing with Section 500)  
11 of the Business and Professions Code, who designs, supervises,  
12 or provides treatment for pervasive developmental disorder or  
13 autism, provided the services are within the experience and  
14 competence of the licensee.

15 (4) “Qualified autism service professional” means an individual  
16 who meets all of the following criteria:

17 (A) Provides behavioral health treatment, including clinical  
18 management and case supervision.

19 (B) Is supervised by a qualified autism service provider.

20 (C) Provides treatment pursuant to a treatment plan developed  
21 and approved by the qualified autism service provider.

22 (D) Is a behavioral service provider who meets the education  
23 and experience qualifications defined in ~~Section 5432~~ 54342 of  
24 Title 17 of the California Code of Regulations for an Associate  
25 Behavior Analyst, Behavior Analyst, Behavior Management  
26 Assistant, Behavior Management Consultant, or Behavior  
27 Management Program.

28 (E) Has training and experience in providing services for  
29 pervasive developmental disorder or autism pursuant to Division  
30 4.5 (commencing with Section 4500) of the Welfare and  
31 Institutions Code or Title 14 (commencing with Section 95000)  
32 of the Government Code.

33 (5) “Qualified autism service paraprofessional” means an  
34 unlicensed and uncertified individual who meets all of the  
35 following criteria:

36 (A) Is supervised by a qualified autism service provider.

37 (B) Provides treatment and implements services pursuant to a  
38 treatment plan developed and approved by the qualified autism  
39 service provider or qualified autism service professional.

1 (C) Meets the education and ~~experience~~ *training* qualifications  
2 defined in the regulations adopted pursuant to Section 4686.3 of  
3 the Welfare and Institutions Code.

4 (D) Has adequate education, training, and experience, as  
5 certified by a qualified autism service provider.

6 (d) This section shall not apply to the following:

7 (1) A specialized health care service plan that does not deliver  
8 mental health or behavioral health services to enrollees.

9 (2) A health care service plan contract in the ~~MDI-Cal~~ *Medi-Cal*  
10 program (Chapter 7 (commencing with Section 14000) of Part 3  
11 of Division 9 of the Welfare and Institutions Code).

12 (e) This section does not limit the obligation to provide services  
13 pursuant to Section 1374.72.

14 (f) As provided in Section 1374.72 and in paragraph (1) of  
15 subdivision (a), in the provision of benefits required by this section,  
16 a health care service plan may utilize case management, network  
17 providers, utilization review techniques, prior authorization,  
18 copayments, or other cost sharing.

19 SEC. 2. Section 10144.51 of the Insurance Code is amended  
20 to read:

21 10144.51. (a) (1) Every health insurance policy shall also  
22 provide coverage for behavioral health treatment for pervasive  
23 developmental disorder or autism no later than July 1, 2012. The  
24 coverage shall be provided in the same manner and shall be subject  
25 to the same requirements as provided in Section 10144.5.

26 (2) Notwithstanding paragraph (1), as of the date that proposed  
27 final rulemaking for essential health benefits is issued, this section  
28 does not require any benefits to be provided that exceed the  
29 essential health benefits that all health insurers will be required by  
30 federal regulations to provide under Section 1302(b) of the federal  
31 Patient Protection and Affordable Care Act (Public Law 111-148),  
32 as amended by the federal Health Care and Education  
33 Reconciliation Act of 2010 (Public Law 111-152).

34 (3) This section shall not affect services for which an individual  
35 is eligible pursuant to Division 4.5 (commencing with Section  
36 4500) of the Welfare and Institutions Code or Title 14  
37 (commencing with Section 95000) of the Government Code.

38 (4) This section shall not affect or reduce any obligation to  
39 provide services under an individualized education program, as  
40 defined in Section 56032 of the Education Code, or an individual

1 service plan, as described in Section 5600.4 of the Welfare and  
2 Institutions Code, or under the federal Individuals with Disabilities  
3 Education Act (20 U.S.C. Sec. 1400 et seq.) and its implementing  
4 regulations.

5 (b) Pursuant to Article 6 (commencing with Section 2240) of  
6 Title 10 of the California Code of Regulations, every health insurer  
7 subject to this section shall maintain an adequate network that  
8 includes qualified autism service providers who supervise qualified  
9 autism service professionals or paraprofessionals who provide and  
10 administer behavioral health treatment. Nothing shall prevent a  
11 health insurer from selectively contracting with providers within  
12 these requirements.

13 (c) For the purposes of this section, the following definitions  
14 shall apply:

15 (1) "Behavioral health treatment" means professional services  
16 and treatment programs, including applied behavior analysis and  
17 other evidence-based behavior intervention programs, that develop,  
18 ~~maintain~~, *keep*, or restore, to the maximum extent practicable, the  
19 functioning of an individual with pervasive developmental disorder  
20 or autism, and that meet all of the following criteria:

21 (A) The treatment is prescribed by a physician and surgeon  
22 licensed pursuant to Chapter 5 (commencing with Section 2000)  
23 of, or is developed by a psychologist licensed pursuant to Chapter  
24 6.6 (commencing with Section 2900) of, Division 2 of the Business  
25 and Professions Code.

26 (B) The treatment is provided under a treatment plan prescribed  
27 by a qualified autism service provider and is administered by one  
28 of the following:

29 (i) A qualified autism service provider.

30 (ii) A qualified autism service professional supervised by the  
31 qualified autism service provider.

32 (iii) A qualified autism service paraprofessional supervised by  
33 a qualified autism service provider.

34 (C) The treatment plan has measurable goals over a specific  
35 timeline that is developed and approved by the qualified autism  
36 service provider for the specific patient being treated. The treatment  
37 plan shall be reviewed no more than once every six months by the  
38 qualified autism service provider, unless a shorter period is  
39 recommended by the qualified autism service provider, and  
40 modified whenever appropriate, and shall be consistent with

1 Section 4686.2 of the Welfare and Institutions Code pursuant to  
2 which the qualified autism service provider does all of the  
3 following:

4 (i) Describes the patient's behavioral health impairments or  
5 developmental challenges that are to be treated.

6 (ii) Designs an intervention plan that includes the service type,  
7 number of hours, and parent or caregiver participation  
8 recommended by a qualified autism service provider ~~needed~~ to  
9 achieve the plan's goal and objectives, and the frequency at which  
10 the patient's progress is evaluated and reported. Lack of parent or  
11 caregiver participation shall not be used to deny or reduce  
12 medically necessary behavioral health treatment.

13 (iii) Provides intervention plans that utilize evidence-based  
14 practices, with demonstrated clinical efficacy in treating pervasive  
15 developmental disorder or autism.

16 (iv) Discontinues intensive behavioral intervention services  
17 when the treatment goals and objectives are achieved or no longer  
18 appropriate, and continued therapy is not necessary to maintain  
19 function or prevent deterioration.

20 (D) (i) The treatment plan is not used for purposes of providing  
21 or for the reimbursement of respite, day care, or ~~educational~~  
22 ~~academic~~ services and is not used to reimburse a parent for  
23 participating in the treatment program.

24 ~~(ii) Notwithstanding the above, all medically necessary~~  
25 ~~behavioral health treatment shall be covered in all settings~~  
26 ~~regardless of time or location of delivery.~~

27 *(ii) The setting, location, or time of treatment shall not be used*  
28 *as a reason to deny medically necessary behavioral health*  
29 *treatment.*

30 (iii) The treatment plan shall be made available to the insurer  
31 upon request.

32 (2) "Pervasive developmental disorder or autism" shall have  
33 the same meaning and interpretation as used in Section 10144.5.

34 (3) "Qualified autism service provider" means either of the  
35 following:

36 (A) A person, entity, or group that is certified by a national  
37 entity, such as the Behavior Analyst Certification Board, that is  
38 accredited by the National Commission for Certifying Agencies,  
39 and who designs, supervises, or provides treatment for pervasive  
40 developmental disorder or autism, provided the services are within



1 the experience and competence of the person, entity, or group that  
2 is nationally certified.

3 (B) A person licensed as a physician and surgeon, physical  
4 therapist, occupational therapist, psychologist, marriage and family  
5 therapist, educational psychologist, clinical social worker,  
6 professional clinical counselor, speech-language pathologist, or  
7 audiologist pursuant to Division 2 (commencing with Section 500)  
8 of the Business and Professions Code, who designs, supervises,  
9 or provides treatment for pervasive developmental disorder or  
10 autism, provided the services are within the experience and  
11 competence of the licensee.

12 (4) “Qualified autism service professional” means an individual  
13 who meets all of the following criteria:

14 (A) Provides behavioral health treatment, including clinical  
15 management and case supervision.

16 (B) Is employed and supervised by a qualified autism service  
17 provider.

18 (C) Provides treatment pursuant to a treatment plan developed  
19 and approved by the qualified autism service provider.

20 (D) Is a behavioral service provider who meets the education  
21 and experience qualifications defined in ~~Section 5432~~ 54342 of  
22 Title 17 of the California Code of Regulations for an Associate  
23 Behavior Analyst, Behavior Analyst, Behavior Management  
24 Assistant, Behavior Management Consultant, or Behavior  
25 Management Program.

26 (E) Has training and experience in providing services for  
27 pervasive developmental disorder or autism pursuant to Division  
28 4.5 (commencing with Section 4500) of the Welfare and  
29 Institutions Code or Title 14 (commencing with Section 95000)  
30 of the Government Code.

31 (5) “Qualified autism service paraprofessional” means an  
32 unlicensed and uncertified individual who meets all of the  
33 following criteria:

34 (A) Is supervised by a qualified autism service provider.

35 (B) Provides treatment and implements services pursuant to a  
36 treatment plan developed and approved by the qualified autism  
37 service provider or qualified autism service professional.

38 (C) Meets the education and ~~experience~~ *training* qualifications  
39 defined in the regulations adopted pursuant to Section 4686.3 of  
40 the Welfare and Institutions Code.

1 (D) Has adequate education, training, and experience, as  
2 certified by a qualified autism service provider.

3 (d) This section shall not apply to the following:

4 (1) A specialized health insurance policy that does not cover  
5 mental health or behavioral health services or an accident only,  
6 specified disease, hospital indemnity, or Medicare supplement  
7 policy.

8 (2) A health insurance policy in the ~~MDI-Cal~~ *Medi-Cal* program  
9 (Chapter 7 (commencing with Section 14000) of Part 3 of Division  
10 9 of the Welfare and Institutions Code).

11 (e) As provided in Section 10144.5 and in paragraph (1) of  
12 subdivision (a), in the provision of benefits required by this section,  
13 a health insurer may utilize case management, network providers,  
14 utilization review techniques, prior authorization, copayments, or  
15 other cost sharing.

16 SEC. 3. Section 10144.52 of the Insurance Code is amended  
17 to read:

18 10144.52. For purposes of this part, the terms “provider,”  
19 “professional provider,” “network provider,” “mental health  
20 provider,” and “mental health professional” shall include the term  
21 “qualified autism service provider,” as defined in subdivision (c)  
22 of Section 10144.51.

23 SEC. 4. No reimbursement is required by this act pursuant to  
24 Section 6 of Article XIII B of the California Constitution because  
25 the only costs that may be incurred by a local agency or school  
26 district will be incurred because this act creates a new crime or  
27 infraction, eliminates a crime or infraction, or changes the penalty  
28 for a crime or infraction, within the meaning of Section 17556 of  
29 the Government Code, or changes the definition of a crime within  
30 the meaning of Section 6 of Article XIII B of the California  
31 Constitution.